

From: Jay Llewellyn
To: Microsoft ATR
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Subject: Microsoft Settlement

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Dear sir or madam:

As a computer user I am an interested party to the current anti-trust settlement, and I am submitting comments on proposed actions against Microsoft, which I believe will correct the current situation. My opinions, based on 16 years of industry experience, which include being the former Global Technical Account manager for such PC OEM's as IBM, Digital Equipment, now part of Compaq, Unisys, and Gateway 2000 during my employment by Netscape from April 1996 through December 1998. Currently I am employed by The Vanguard Group as the Chief Architect for Advanced technology, I do not represent The Vanguard Group for the purpose of this letter, but I mention my employment as a reference for my overall credibility. During my employment by The Vanguard Group have created a partnership with Microsoft and have worked closely on the development of products and I've been quoted by Microsoft a number of times, <http://www.microsoft.com/presspass/press/2001/Mar01/03-05SupportPR.asp>. I mention my relationship with Microsoft to demonstrate that as a former Netscape employee I am not motivated by anything other than achieving a fair and even playing field.

I not only bring an insider perspective on the inner-workings of the PC OEM business, the software industry in general, and the average consumer. I am also aware of the issues faced by a large organization which spends a significant amount of money buying PC's and associated software for PC's. I am confident that I bring a unique and insightful position on the current situation. I have spent a considerable amount of time over the last five years analyzing the existing situation, and have arrived at what I believe, are the most compact, understandable, balanced, and enforceable set of restrictions possible. My goal is not to cripple Microsoft or impose unreasonable restraint, but merely to level the playing field. These restrictions are organized in three groups, the first group address the issues of bundling products with the operating system, the second group is focused on the bundling of products with sale of personal computers, and the third group concerns itself with the publishing of Windows API's.

Restrictions with the Operating Systems for bundling, un-bundling and free

The first restriction placed on Microsoft would prevent them from simultaneously bundling products into any or all of their operating systems, and un-bundling the same product by allowing it to be downloaded, or distributed free of charge. Microsoft is retroactively bundling products with all previous versions of their operating system when they allow bundled products to be distributed free of charge. The simultaneous act of both bundling and un-bundling of products creates an unfair advantage based on their monopoly position with operating systems for personal computers. Unless this practice is prevented, it will be *impossible*, to level the playing field for competitors. Any product from a competitor that is deemed a threat to an existing Microsoft product, or to the operating system itself, can easily be eliminated by the simple action of bundling a similar Microsoft product into the operating systems and allowing the product to be downloaded free of charge for those people who don't have the latest version of the operating system.

As an example, if Microsoft were to bundle Microsoft Money into versions of the Windows operating system and then made the product free to download for everyone who had an older version of Windows it would overnight change the market share for Microsoft Money and its competing product Quicken from Intuit. How many people would be inclined to purchase Quicken from Intuit at a list price

of \$49.99, when Microsoft Money is available free? How long would Intuit be able to compete with free, and how long after the demise of Intuit would Microsoft stop aggressively updating the product, or worse start charging for updated tax code information, something that Microsoft was willing to give away when it had competition?

The second restriction placed on Microsoft would prevent the distribution any product free of charge. Because of the Microsoft monopoly for PC operating systems the free of charge distribution is really an implied contract for the bundling of products with the operating system both in the future and retroactively. The implied bundling would drive competition out of the market, and once competition is driven from the market Microsoft is free to charge anything they chose.

Microsoft has a choice for each and every new product they develop; should they bundled it with the next version of an OS, or should they sell it as a standalone product? Either way a Microsoft product is never available as a free download, except as a trial version or through an early access program, or a similar policy which Microsoft consistently enforces for *all* products, regardless of price. Retroactive bundling must be prevented.

As an example of how these restriction would be applied, I'll demonstrate using a fictitious Microsoft product XYZ, and a fictitious Microsoft OS version ??,

Microsoft develops a new product XYZ version 1.0. Microsoft must make a decision; do they bundle the product with the next variant of their operating system, or do they sell the product standalone now? Microsoft could not to bundle XYZ 1.0 with a version of an operating systems which had been available prior to the introduction of XYZ 1.0, *retroactive bundling is forbidden*, in any way shape or form. Microsoft has every right to bundle XYZ version 1.0 with OS version ??, but once the product is bundled with the OS it is not available separately as a freely available download, it is not allowed to be included on CD-ROM's that are provided with computer books. It is bundled with OS version ??, and the only way that XYZ version 1.0 is available is for the consumer to buy OS version ??, or an upgrade to version ??. Normal bug fixes, and minor updates would be allowed to the product, via free download, or low cost CD distribution., which is how it is accomplished today. If Microsoft chose to upgrade XYZ to version 2.0 the only way that Microsoft could distribute XYZ version 2.0 is with the next version of OS version ??, and the only way that the consumer could receive version 2.0 of XYZ would be through the new purchase of new OS version ?? that has XYZ 2.0 bundled, or a purchased upgrade for OS version ??.

If Microsoft chose not to bundle XYZ version 1.0 with an operating system, then Microsoft would sell XYZ as a standalone product. Time limited, or feature restricted versions could be available via download, or possibly included with CD-ROM's included with books, but the full version must be purchased. If Microsoft chose to upgrade XYZ to version 2.0 the consumer could only receive XYZ version 2.0 one of three ways, either through a paid upgrade to the product, purchasing the new version, or purchasing a subscription to the product, but version 2.0, or the upgrade to version 2.0 would never be available via free download.

Since Microsoft has many different operating system variants, they could choose too bundle XYZ 1.0 with one or more of their operating systems, but exclude XYZ 1.0 on other operating systems. The only way that XYZ would be available for the excluded operating systems would be via purchase of the standalone product. The product would never be available free of charge for the excluded operating systems. Upgrades would behave has explained previously, for both the bundled and standalone products.

This remedy would allow Microsoft to Innovate, but it would not allow their products to gain dominant market share over time without competing on either price, or features. The act of bundling and un-bundling eliminates all distribution barriers for Microsoft, this is an unfair advantage and must be

eliminated. Microsoft exploited this advantage with Internet Explorer, and they could exploit it again at any time with any product.

This remedy would level the playing field for companies competing with Microsoft, it is simple to understand and very easy to enforce, without the need for an oversight committee. The net effect would prevent Microsoft from gaining an unfair advantage for other product segments via their operating system monopoly.

Personal computer sales restrictions

The restrictions on the bundling of operating system or standalone products with the purchase of a personal computer are simple to understand and very easy to enforce, without the need for an oversight committee, and the restrictions in no way limit Microsoft's ability to innovate or sell any products. The restrictions are outlined below:

- No Microsoft product, that is operating system or standalone product, can be automatically included with the purchase of a personal computer, all Microsoft products are consumer optional purchases.
- No Microsoft product can automatically be included with the purchase of any other Microsoft product, free of charge or not.
- All Microsoft products sold by PC OEM's cannot differ from retail versions, including but not limited to: documentation, installation methods, distribution medium, etc. Specifically the version of operating systems purchased by the consumer is a limited copied for a particular configuration, vendor, or situation.
- All prices for Microsoft products, sold by PC OEM's will have a reasonable cost, meaning not excessively cheap relative to list price. Microsoft cannot finance the sale of Microsoft products through other means.
- No Microsoft product can be offered with the purchase of personal computer as a zero cost option, unless as a limited time offer, as a rebate, or as a special deal.
- All Microsoft products when selected for purchased by a consumer with a new computer will have a individual line item, it will also have a non-zero, and reasonable cost, unless as a limited time offer, as a rebate, or as a special deal
- Microsoft cannot dictate what version of their operating systems are available for sale with a personal computer, the consumer will make that optional selection from the versions offered by the PC OEM. Microsoft cannot restrict the versions of their operating systems available to PC OEM's, if the OS is available for sale, PC OEM's will have the option to sell it with their computers. Microsoft cannot influence or incent PC OEM's to favor the sale of a particular operating system version.
- Once a consumer has selected a Microsoft product it can be customized in *any way* by the PC OEM, via direction from the consumer. The PC OEM will be acting as an agent of the consumer, not as an agent of Microsoft. Which means that a customer can select the default Microsoft installation, or choose a customized version offered by the PC OEM, or create their own customized version, if offered by the PC OEM, of course additional cost may be incurred by the consumer for exercising this choice.

Windows API's

Microsoft shall publish *ALL* API's for all their Operating Systems. Because Microsoft owns a monopoly in PC operating systems they can create unfair advantages for their standalone products by using features of the operating system known only to Microsoft.

Punishment

Punishment for violation of any restrictions will be a dollar amount equal to the gross revenue generated by the sale of any and all product that fail to comply, from the time Microsoft is in violation until the situation is remedied. The punishment is fair considering Microsoft has profited unfairly at the expense of others, and has accumulated an enormous amount of cash because of this unfair profiteering. A severe penalty is also incentive for compliance.

Final Thoughts

Unless the distribution methods that Microsoft currently enjoys are changed, and I'm confident that the changes I have outlined are the most fair and succinct, *Microsoft will be able to overrun any product at any time simply by declaring a similar Microsoft product bundled with the OS and allowing it to be downloaded free of charge.* Retroactive bundling, and the distribution of products free of charge must be prevented. The restrictions outlined would not require the appointment of an oversight committee. Any solution that is more complicated would be unfair to Microsoft, it would be impossible for Microsoft to conduct business if they are scrutinized by an oversight committee.

The outlined changes would also help to strengthen the PC OEM's, a business sector which is in a dire state. The dire state of the PC OEM business has been created by Microsoft through their restrictive license and contract agreements. When a PC OEM is forced by Microsoft, under terms and conditions favorable to Microsoft, to include Microsoft products, this forced inclusion is really a cost for the PC OEM's, which they cannot pass on to the consumer. Under the new restrictions the real actual cost of Microsoft products would be reflected and the PC OEM's would have the chance to receive a fair and reasonable profit from the sale of Microsoft products with their computers. As an example the list price of Windows XP is \$199, because of the volume that PC OEM's buy they may be able to achieve 60%, or greater, discount, some of which could be passed on to the consumer, but the PC OEM would still make money on the sale of the Microsoft OS, and the consumer could pay less than list price. The PC OEM could also charge for the customization of the OS, which would have benefits for the OEM and the consumer.

Microsoft has created an *artificially low price for Microsoft products bundled with new computers* through restrictive monopolistic practices. Protecting prices for consumer good would be short sighted in this case. It is true that there could be an increased cost for the consumer when buying a *new computer*, when a consumer chose to *add Microsoft products*, but the consumer would also have a choice to not pay the increased cost. Currently Microsoft dictates what is purchased and at what price. The consumer should have the choice, even if it means the choice might cost a little more.

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The outlined changes would also benefit large organizations which buy PC that have an OS bundled, but are then forced to buy enterprise OS licenses from Microsoft. This double dipping by Microsoft would be a welcome relief by large organizations, it would also clear up an extremely complex licensing situation, which is un-necessary and only beneficial to Microsoft..

The restrictions that have been outlined would not impede Microsoft at all, in fact had this model been in place since the last consent decree levied against Microsoft, they would have made considerable more money on their operating system, and there would still be competition in the browser marketplace. For Internet Explorer alone, if Microsoft had not bundled that product with the OS they would have sold at least 20 Million copies at \$49.99 which means they would have made, an additional \$1 Billion in profits.

Microsoft should be forced to comply with these restriction immediately and for a period of not less than 8 years, where the restrictions and market conditions could be re-evaluated.

Sincerely,

Jay Llewellyn